

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

FIRST APPEAL NO. 422 OF 2002

The Divisional Manager,
United India Insurance Company Ltd.,
Divisional Office,
New Osmanpura, Aurangabad.

... Appellant
(Original Respondent No.3)

VERSUS

1. Subhash s/o. Pitamberlal Jaiswal,
Age : 40 yrs, Occu : Business,
R/o Deopriya, Station Road,
Dist.Aurangabad
2. Budhan Khan s/o. Bhikan Khan Pathan,
Age : 40 yrs, Occu : Truck driver,
R/o Bharadi, Tq. Sillod,
Dist. Aurangabad
3. Sureshsing s/o. Amarsing,
Age : Major, Occu : Business,
Truck Owner, Resident of
At & Post : Bharadi, Tq. Sillod,
Dist. Aurangabad
4. Divisional Manager
National Insurance Co. Hajari Chambers,
Railway Station, Dist. Aurangabad

... Respondents

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Shri A.D. Soman, Advocate for Appellant
Shri R.R. Sancheti h/f. Shri R.R. Mantri, Advocate for
respondent Nos.1 & 4
Mr. V.N. Upadhye, Advocate for Respondent No.3

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CORAM : P.R. BORA, J.

RESERVED ON : 18.07.2017
PRONOUNCED ON : 28.09.2017

JUDGMENT :

1. Heard the learned Counsel appearing for the parties.
2. 'Whether the Motor Accidents Claims Tribunal constituted under Section 165 of The Motor Vehicles Act, 1988 can entertain under Section 166 of the said Act an 'Own Damage Claim' is the question for my consideration in the present appeal.
3. In Motor Accident Claim Petition No.269/1993 decided on 16th February, 2002, the Motor Accident Claims Tribunal at Aurangabad has awarded the compensation by way of damages to the tune of Rs.2,74,000/- to the owner of the vehicle towards loss caused to the jeep owned by him from the Insurance Company, with which, the said jeep was insured. The present appellant is the said Insurance Company and present respondent no.1 had filed the aforesaid claim petition.
4. Shri Soman, learned Counsel appearing for the appellant –

Insurance Company has challenged the impugned Judgment mainly on the ground that, the tribunal was not having any jurisdiction to try and entertain the claim petition so filed by respondent no.1. As against it, Shri R.R. Mantri the learned Counsel appearing for respondent no.1 has supported the impugned Judgment and award.

5. In its written statement, the appellant – Insurance Company had raised a specific plea that, own damage claim was not liable to be entertained by the Tribunal against it. I find it appropriate to reproduce herein below para 2 of the said written statement, which reads thus :

"2. The jeep in question is insured with this respondent under comprehensive cover for which an Own Damage Claim under the contractual liability was filed with the Company which is repudiated by this respondent as the jeep was carrying passengers on hire & reward at the material time. Against this cause of action the respondent says that the remedy would be to file a Civil Suit against this respondent. The claim is not maintainable before this Tribunal since there is no alleged cause of action against this Respondent. Naturally speaking the liability of the claimant himself can be indemnified by this Resp. when negligence of the Insured (Claimant himself) is proved before this Court. Since the claimant himself can not be a resp. in the same proceedings this petition deserves to be dismissed against this Resp., who is wrongly joined in the array of respondents."

6. Based on the plea so raised by the appellant – Insurance Company a specific issue was framed '*whether the claim petition is maintainable*'. The tribunal has answered the said issue in affirmative.

7. From the material on record, it is evident that, the issue so framed by the learned Tribunal was not properly framed. The claim petition was filed not only against the appellant – Insurance Company, but also against the driver, owner and insurer of the truck, the another vehicle involved in the alleged accident. The plea of maintainability was raised by the appellant – Insurance Company alone. The issue as about the maintainability of the petition must have been, therefore specifically framed restricted to the maintainability of the petition against the appellant – Insurance Company. The discussion made by the tribunal while deciding the aforesaid issue is, however, only in respect of the appellant – Insurance Company.

8. Reasoning given by the learned Tribunal while deciding the aforesaid issue in affirmative, is wholly unacceptable. As has been observed by the Tribunal, because of the decision of this Court in First Appeal No.177/2000 with First Appeal No.178/2000 decided on 09.07.2001, the defence raised by the appellant – Insurance

Company was liable to be turned down and is accordingly turned down by the Tribunal.

9. I have carefully perused the Judgment passed by this Court in First Appeal No.177/2000 with First Appeal No.178/2000. The aforesaid appeals were filed by respondent no.1 against the decision of the Motor Accident Claims Tribunal in Motor Accident Claim Petition No.218/1993 and 283/1993. The said claim petitions were allowed only against the owner of the jeep i.e. respondent no.1 and the appellant – Insurance Company was exonerated from its liability to indemnify the insured. The aforesaid claim petitions were admittedly filed by the legal heirs of deceased, who died in the alleged accident while traveling through the jeep owned by respondent no.1 and insured with the appellant – Insurance Company.

10. The Tribunal, which decided the Motor Accident Claim Petition Nos.218/1993 & 283/1993 had held that, there was breach of insurance policy on account of excess passengers being carried through the insured jeep than permitted capacity and as such Insurance Company was exonerated and the entire liability of paying compensation to the claimants was fixed on the owner of the jeep.

This Court while deciding First Appeal No.177/2000 with First Appeal No.178/2000 held that, the Tribunal has wrongly concluded that there was breach of Insurance Policy, but in fact it was breach of permit. The High Court, therefore, set aside the order passed by the Tribunal exonerating the appellant Insurance Company and held it jointly and severally liable along with respondent no.1 to pay the compensation granted by the Tribunal to the respective claimants in the aforesaid claim petitions.

11. The persons, who had filed the aforesaid claim petitions were admittedly third parties. The petitions filed by them were therefore perfectly maintainable under Section 166 of M.V. Act before the Motor accident Claims Tribunal. The question involved in the said matters was 'whether the tribunal has committed any error in exonerating the Insurance Company from its liability holding that, the owner of the jeep had committed breach of policy condition by carrying excess number of passengers in the said jeep and as noted herein above the finding recorded by the Tribunal exonerating the Insurance Company was set aside by the High Court in the aforesaid appeals. The said decision in First Appeal No. 177/2000 & 178/2000 thus cannot be made applicable to the facts of the present case.

12. The Tribunal has manifestly erred in recording a conclusion based on the decision of this Court in First Appeal No.177/2000 that, the defence raised by the Insurance Company about the maintainability of the petition against it was no more available to it. I reiterate that, the issue involved in First Appeal No.177/2000 was altogether different than the issue raised in the present matter. The Tribunal was thus under an obligation to decide the issue of maintainability independently having regard to the relevant provisions in the M.V. Act. Unfortunately the Tribunal has not even referred to the relevant provisions.

13. Section 165 of the M.V. Act deals with the constituting of the Claims Tribunals. I deem it necessary to reproduce herein below clause (1) of Section 165 of the M.V. Act, which reads thus :

“165. Claims Tribunals.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.”

14. There cannot be a dispute that, the Motor Accident Claim

Tribunal at Aurangabad is constituted under Section 165 of the M.V. Act. On reading of the aforesaid provision, there remains no doubt that, the Tribunal under Section 165 of the M.V. Act is constituted for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. It is thus evident that, the claim, if any, in regard to the damages to the property of a third party can only be entertained by the Tribunals constituted under Section 165 of the M.V. Act and the claim for own damages does not fall within the purview of the Motor Accident Claims Tribunal constituted under the aforesaid provision. Section 166 of the Motor Vehicles Act provides that, an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made – (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

15. Section 166 of the M.V. Act cannot be read in isolation. It

has to be read with Section 165 of the Act. The conjoint reading of which leaves no doubt that the 'own damage claim' cannot be entertained by the Claims Tribunal under Section 166 of the M.V. Act. Arising out of the use of a motor vehicle if the damages are caused to the property of a third party the said party can certainly approach the Claims Tribunal and seek compensation under Section 166 of the Act from the owner and insurer of the offending vehicle, for the damages caused to his property. In the instant matter, in no case it can be said that, respondent no.1 i.e. original claimant is a third party *qua* appellant – Insurance Company. The same was therefore not liable to be entertained by the Tribunal.

16. It has to be further stated that, the claims arising out of the tort liability are made before the claims Tribunal. Unless some tort has committed by the third party, no party can approach the claims tribunal. In the circumstances, the claim made by the claimant against the driver, owner and insurer of the another vehicle though was perfectly maintainable, it was not maintainable against the appellant – Insurance Company.

17. Section 146 of the M.V. Act lays down the requirements for insurance against the third party risk. Where a third party risk is

involved, and Insurance policy is required to be mandatorily taken out. The requirements of policies and the limits of liability, however, have been stated in section 147 of the Act. Section 147 (1)(b) of the Act, reads as under :

"147. Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a)

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

- (b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

. The provisions of the Act, therefore, provide for two types of insurance - one statutory in nature and the other contractual in nature. The insurance company is bound to compensate the owner or the driver of the motor vehicle in case any person dies or suffers injury as a result of an accident; or any damage is caused to the property of the third party. The claims, which arise out of the statutory liability, only are to be adjudicated by the Motor Accident Claims Tribunal constituted under Section 165 of the M.V. Act. The claims arising out of the contractual liability obviously cannot be entertained by the Tribunals.

18. In view of the legal provisions discussed as above, the claim filed by respondent no.1 before the Motor Accident Claims Tribunal seeking compensation by way of damages caused to his own vehicle was not maintainable against the appellant - Insurance Company. The tribunal has erred in allowing the claim petition against the appellant – Insurance Company. The impugned Judgment

to that extent therefore needs to be quashed and set aside and is accordingly set aside. Consequently the Motor Accident Claim Petition No.269/1993 is dismissed against the appellant - Insurance Company. Appeal thus stands allowed.

(P.R. BORA, J)